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Fish and Game Commission



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August 26, 2015

TO ALL INTERESTED AND AFFECTED PARTIES:

This is to provide you with a copy of the notice of proposed regulatory action relative to Section 632, Title 14, California Code of Regulations, relating to marine protected areas, which will be published in the California Regulatory Notice Register on August 28, 2015.

Please note the date of the public hearing related to this matter and associated deadlines for receipt of written comments.

Ms. Amanda Van Diggelen, Environmental Scientist, Marine Region, Department of Fish and Wildlife, (562) 342-7176 or Amanda.VanDiggelen@wildlife.ca.gov, has been designated to respond to questions on the substance of the proposed regulations.

Sincerely,

Sherrie Fonbuena

Sherrie Fonbuena
Associate Governmental Program Analyst

Attachment

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**TITLE 14. Fish and Game Commission
Notice of Proposed Changes in Regulations**

NOTICE IS HEREBY GIVEN that the Fish and Game Commission (Commission), pursuant to the authority vested by Sections 200, 202, 205(c), 220, 240, 1590, 1591, 2860, 2861 and 6750 of the Fish and Game Code, and Sections 36725(a) and 36725(e) of the Public Resources Code; and to implement, interpret or make specific Sections 200, 202, 205(c), 220, 240, 2861, 5521, 6653, 8420(e) and 8500 of the Fish and Game Code, and Sections 36700(e), 36710(e), 36725(a) and 36725(e) of the Public Resources Code, proposes to amend Section 632, Title 14, California Code of Regulations (CCR), relating to marine protected areas.

Informative Digest/Policy Statement Overview

The Marine Life Protection Act (Fish and Game Code Sections 2850-2863) established a programmatic framework for designating Marine Protected Areas (MPAs) in the form of a statewide network. The Marine Managed Areas Improvement Act (Public Resources Code [PRC] Sections 36600-36900) standardized the designation of marine managed areas (MMAs), which include MPAs. The overriding goal of these acts is to protect, conserve, and help sustain California's valuable marine resources. Unlike previous laws, which focused on individual species, these acts focus on maintaining the health of marine ecosystems and natural biodiversity in order to sustain resources.

Existing regulations in Section 632, Title 14, CCR, provide general provisions, definitions, and site-specific area classifications, boundary descriptions, commercial and recreational take restrictions, and other restricted/allowed uses for MPAs, MMAs and special closures.

The proposed regulatory changes will clarify the allowed and prohibited uses for all MMA designations; amend aquaculture activities for two MMAs; and amend troll gear references for ten MMAs. In addition, the proposed regulations change the designation of one MMA; change the names of 21 MMAs; and refine boundary coordinates for 106 MMAs.

The following is a summary of the proposed changes to Section 632, Title 14, CCR.

Amendment to Subsection 632(a):

1. The proposed regulations add a citation to the statute (Public Resources Code Section 36710) which established the MMA definitions in subsection 632(a)(1).

Amendments to Subsection 632(b):

1. The proposed regulations clarify regulatory language, correct existing errors, and update allowable activities within MMAs.
 - a. The proposed regulation replaces the existing text with new text, as follows:

Area	Existing text	New text
State Marine Reserve (SMR)	"Take of all living marine resources is prohibited"	"Area restrictions defined in subsection 632(a)(1)(A) apply"

State Marine Park	"Take of all living marine resources is prohibited except..."	"Area restrictions defined in subsection 632(a)(1)(B) apply with the following specified exceptions..."
State Marine Conservation Area (SMCA)		"Area restrictions defined in subsection 632(a)(1)(C) apply with the following specified exceptions..."
State Marine Recreational Management Area (SMRMA)	"Take of all living marine resources is prohibited" OR "Take of all living marine resources is prohibited except..."	"Area Restrictions defined in subsection 632(a)(1)(D) apply" OR "Area restrictions defined in subsection 632(a)(1)(D) apply with the following specified exceptions..."

- b. The proposed regulations restructure the regulatory text for MacKerricher SMCA, subsection 632(b)(22)(B), Russian Gulch SMCA, subsection 632(b)(24)(B), Van Damme SMCA, subsection 632(b)(26)(B), and Arrow Point to Lion Head Point (Catalina Island) SMCA, subsection 632(b)(123)(B), in order for their activities language to resemble the remaining MMA descriptions, listing allowable activities instead of prohibited activities.
- c. The proposed regulations add the text "is allowed" to the current regulatory text for 41 MMAs.
- d. The proposed regulations delete the allowance for aquaculture in Drakes Estero SMCA, subsection 632(b)(47)(B).
- e. The proposed regulations amend the current species list for aquaculture within Morro Bay SMRMA, subsection 632(b)(91)(C), to be dependent upon lease conditions rather than a designated list of species.
- f. The proposed regulations replace obsolete salmon troll gear reference with the current salmon troll gear reference for nine MMAs.
- g. The proposed regulations delete the obsolete pelagic finfish troll gear reference from Bodega Head SMCA, subsection 632(b)(40)(B).
- h. The proposed regulations remove commercial harvest of kelp as an allowed activity in Año Nuevo SMCA, subsection 632(b)(67), and redesignate this SMCA as a SMR.
- i. The proposed regulations simplify the names of 21 MMAs by striking the parenthesized text which identifies the geographic location of a given MMA.
- j. The proposed regulations amend text for Point Lobos SMCA, subsection 632(b)(82), and Big Creek SMCA, subsection 632(b)(86), to clarify that albacore may be taken both recreationally and commercially.

2. The proposed regulations improve boundary accuracy and ease of enforcement for numerous MMAs.
 - a. The proposed regulations add a third decimal place to the current coordinates for 76 MMAs and eight special closures.
 - b. The proposed regulations move one or more of the existing coordinates toward an intended point of reference, such as a headland, bridge or mean high tide line, for 61 MMAs and three special closures.
 - c. The proposed regulations delete text pertaining to the mean high tide line for Carmel Pinnacles SMR, subsection 632(b)(79)(A), Point Sur SMCA, subsection 632(b)(84)(A), and Piedras Blancas, SMCA 632(b)(88)(A).
 - d. The proposed regulations replace the sole coordinate boundary at Goleta Slough SMCA, subsection 632(b)(100)(A), with the mean high tide line.
 - e. The proposed regulations move the shared boundary between the Laguna Beach SMR, subsection 632(b)(134)(A), and Laguna Beach no-take SMCA, subsection 632(b)(135)(A), south to the city beach/county beach line near Aliso Creek.
 - f. The proposed regulations anchor coordinates for 25 MMAs to the current National Oceanic and Atmospheric Administration's three nautical mile state line.
 - g. The proposed regulations add one or two positions to the list of coordinates for eight MMAs.
3. The proposed regulations correct a printing error in subsection 632(b)(120)(B)1., Abalone Cove SMCA, and make other nonsubstantive changes for clarity and consistency.

The proposed amendments to section 632 will clarify the restrictions and allowable activities in these MMA's; provide greater ease of public understanding and enforceability; and correct boundary descriptions.

The proposed regulations are consistent with regulations concerning sport and commercial fishing and kelp harvest found in Title 14, CCR. The State Water Resources Control Board may designate State Water Quality Protection Areas and the State Park and Recreation Commission may designate State Marine Reserves, State Marine Conservation Areas, State Marine Recreational Management Areas, State Marine Parks and State Marine Cultural Preservation Areas; however, only the Fish and Game Commission has authority to regulate commercial and recreational fishing and any other taking of marine species in Marine Managed Areas. Department staff has searched the California Code of Regulations and has found no other regulations pertaining to authorized activities in marine protected areas and therefore has determined that the proposed amendments are neither inconsistent, nor incompatible, with existing state regulations.

NOTICE IS GIVEN that any person interested may present statements, orally or in writing, relevant to this action at a hearing to be held in the Embassy Suites - LAX North, 9801 Airport Boulevard, Los Angeles, California, on Wednesday, October 7, 2015, at 8:30 a.m., or as soon thereafter as the matter may be heard.

NOTICE IS ALSO GIVEN that any person interested may present statements, orally or in writing, relevant to this action at a hearing to be held in the Town and Country Resort & Convention Center, 500 Hotel Circle North, San Diego, California, on Wednesday, December 9, 2015, at 8:30 a.m., or as soon thereafter as the matter may be heard. It is requested, but not required, that written comments be submitted on or before November 24, 2015 at the address given below, or by email to FGC@fgc.ca.gov. Written comments mailed, or emailed to the Commission office, must be received before 12:00 noon on December 4, 2015. All comments must be received no later than December 9, 2015, at the hearing in San Diego, California. If you would like copies of any modifications to this proposal, please include your name and mailing address.

The regulations as proposed in ~~strikeout~~-underline format, as well as an initial statement of reasons, including environmental considerations and all information upon which the proposal is based (rulemaking file), are on file and available for public review from the agency representative, Sonke Mastrup, Executive Director, Fish and Game Commission, 1416 Ninth Street, Box 944209, Sacramento, California 94244-2090, phone (916) 653-4899. Please direct requests for the above mentioned documents and inquiries concerning the regulatory process to Sonke Mastrup or Sherrie Fonbuena at the preceding address or phone number. **Ms. Amanda Van Diggelen, Environmental Scientist, Department of Fish and Wildlife, (562) 342-7176 or Amanda.VanDiggelen@wildlife.ca.gov, has been designated to respond to questions on the substance of the proposed regulations.** Copies of the Initial Statement of Reasons, including the regulatory language, may be obtained from the address above. Notice of the proposed action shall be posted on the Fish and Game Commission website at <http://www.fgc.ca.gov>.

Availability of Modified Text

If the regulations adopted by the Commission differ from but are sufficiently related to the action proposed, they will be available to the public for at least 15 days prior to the date of adoption. Any person interested may obtain a copy of said regulations prior to the date of adoption by contacting the agency representative named herein.

If the regulatory proposal is adopted, the final statement of reasons may be obtained from the address above when it has been received from the agency program staff.

Impact of Regulatory Action/Results of the Economic Impact Analysis

The potential for significant statewide adverse economic impacts that might result from the proposed regulatory action has been assessed, and the following initial determinations relative to the required statutory categories have been made:

- (a) Significant Statewide Adverse Economic Impact Directly Affecting Business, Including the Ability of California Businesses to Compete with Businesses in Other States:

The proposed action will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states because the proposed amendments make clarification and consistency changes to the current regulations; make minor boundary adjustments; re-designate and rename existing MMAs; and add specified methods of take consistent with existing commercial fishing regulations.

- (b) Impact on the Creation or Elimination of Jobs Within the State, the Creation of New Businesses or the Elimination of Existing Businesses, or the Expansion of Businesses in California; Benefits of the Regulation to the Health and Welfare of California Residents, Worker Safety, and the State's Environment:

The Commission does not anticipate any impacts on creation or elimination of jobs, the creation of new businesses, the elimination of existing businesses or the expansion of businesses in California because these changes will neither increase nor decrease recreational or commercial fishing opportunities within MMAs.

The Commission does not anticipate any benefits to the health and welfare of California residents or to worker safety.

The proposed amendments may benefit the environment by clarifying the administration of the protection of habitat and biodiversity in MMAs.

- (c) Cost Impacts on a Representative Private Person or Business:

The Commission is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

- (d) Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: None.

- (e) Nondiscretionary Costs/Savings to Local Agencies: None.

- (f) Programs Mandated on Local Agencies or School Districts: None.

- (g) Costs Imposed on any Local Agency or School District that is Required to be Reimbursed Under Part 7 (commencing with Section 17500) of Division 4, Government Code: None.

- (h) Effect on Housing Costs: None.

Effect on Small Business

It has been determined that the adoption of these regulations may affect small business. The Commission has drafted the regulations in Plain English pursuant to Government Code Sections 11342.580 and 11346.2(a)(1).

Consideration of Alternatives

The Commission must determine that no reasonable alternative considered by the Commission, or that has otherwise been identified and brought to the attention of the Commission, would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

FISH AND GAME COMMISSION

Dated: August 18, 2015

Sonke Mastrup
Executive Director

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